



ARGEO PAUL CELLUCCI
Governor

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

FILE COPY

NERO

COPY

TRUDY COXE
Secretary

DAVID B. STRUHS
Commissioner

Enforcements & Audits Branch

Signature

TRANSMITTAL FORM

for transmittal to Steven DeGabriele, Director, BCD

1. <u>Eric Fahle</u>	<u>5970</u>	<u>10-20-2003</u>
Originator	phone	date
2. <u>John Carrigan</u>	<u>6585</u>	<u>Prior to 10-20-2003</u>
Other	phone	date
3. _____	_____	_____
Branch Chief	phone	date
4. _____	_____	_____
Deputy Division Director	phone	date

Staff Review - please initial

John Carrigan

Eric Fahle

Ralph Fine

Jeff Gifford

Joel Hartley

Dikran Kaligian

Bruce McComb

Bill Sirull

Walter Sullivan

Abdul Turay

brief description/topic of attached document and action requested

STAND BY FIRST AGREEMENT (SFA). THIS IS THE FARM FOR THE

CROW'S LANE LANDFILL IN NEW BURGTON, MA.

5. Legal Review yes ☒ no _____ (check one) Phone 5926

Attorney Name Susan Ruda date Prior to 10-20-2003

LYNCH, DESIMONE & NYLEN, LLP

ATTORNEYS AT LAW

12 POST OFFICE SQUARE

BOSTON, MASSACHUSETTS 02109

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OF COUNSEL

JAMES W. MURPHY
WAYNE H. SCOTT

1003 117
October 17, 2003

By Hand Delivery

Eric Fahle
Department of Environmental Protection
One Winter Street, 8th Floor
Boston, MA 02108

Re: Crow's Lane Landfill; NVLLC; Standby Trust Agreement

Dear Eric:

Enclosed please find three originals of the Standby Trust Agreement for execution.
Please execute the three Standby Trust Agreements return two originals to my office.

Please contact me if you have any questions.

Thank you.

Sincerely,



Richard A. Nylén, Jr.

RAN/tah

Enclosures

cc: William Thibeault
Jonathan Winnick, Esq.
Mr. Chi C. Ma

CORRECTIVE ACTION STANDBY TRUST AGREEMENT

THIS CORRECTIVE ACTION STANDBY TRUST AGREEMENT ("Standby Trust") is made this ~~20~~ the day of ~~Feb~~ 2003 by and between New Ventures Associates LLC ("the Grantor" or "New Ventures LLC"), a Massachusetts Corporation with a principal place of business at 85-87 Boston Street, Everett, Massachusetts 02149, and U.S. Bank National Association (the "Bank"), a national banking association organized under the laws of the United States and authorized to accept and execute trusts of the kind hereby established pursuant to the laws of the Commonwealth of Massachusetts and required by the Solid Waste Management Regulations, 310 CMR 19.051 (12)(a)(2), as trustee (the "Trustee"); and designating the Department of Environmental Protection (the "Department"), an agency of the Commonwealth of Massachusetts, as beneficiary of this Standby Trust.

WHEREAS, the Department has established financial assurance regulations at 310 CMR 19.051 (the "Financial Assurance Requirements"), requiring Grantor to provide assurance that funds will be available when needed for corrective action, closure and/or post-closure maintenance of the Crow's Lane Landfill located at Crow's Lane, Newburyport, Massachusetts (the "Facility");

WHEREAS, Grantor and the Department, acting pursuant to the Financial Assurance Requirements, desire to maintain financial security for corrective action, closure and/or post-closure maintenance of the Facility and to provide for disbursement of the funds if Grantor has failed in whole or in part to carry out its corrective action, closure and/or post-closure maintenance obligations under the Solid Waste Management Regulations at 310 CMR 19.000 et seq. ("Solid Waste Management Regulations");

WHEREAS, the Facility is subject to an Administrative Consent Order ACOE- NE-01-4001 executed by New Ventures LLC and the Department, dated

February 27, 2003, which, among other things, requires that NVLLC submit engineering plans and specifications and provide financial security to ensure proper corrective action, closure and/or post-closure maintenance of the Facility as required by the Solid Waste Management Regulations;

WHEREAS, Grantor, as grantor, has established (1) this Standby Trust to comply with the Financial Assurance Requirements relating to the Facility and (2) a standby trust fund to provide all or part of such financial assurance for the Facility;

WHEREAS, Grantor, acting through its duly authorized officers, has selected the Bank to serve as the Trustee under this Standby Trust, and the Bank is willing to act as Trustee; and

WHEREAS, Grantor has caused the Trustee to establish an account to hold certain trust funds in the amount and under the terms more particularly set forth in this Standby Trust;

NOW, THEREFORE, Grantor establishes this Standby Trust and appoints the Bank, as Trustee, to hold and administer all money and property received by the Trustee hereunder (the "Trust Fund Property"), in trust and for the benefit of the Department, upon the following terms and conditions.

1. The Grantor hereby establishes the Trust Fund Property for the benefit of the Department and intends that no third party shall have access to the Trust Fund Property except as herein provided.
2. The Trustee has established a trust fund account at the Bank, Account No. 743679000, and so entitled "New Ventures LLC Standby Trust Account," in which it will deposit and hold the Trust Fund Property, including any proceeds and investments of the initial Trust Fund Property or other amounts received by it as Trustee hereunder. The Trustee will keep possession of the pertinent

documents evidencing the existence of said account until the account is terminated in accordance with the provisions hereof and shall furnish all parties with the account number and copies of all pertinent documents related to said account.

3. Upon execution of this Agreement, the Grantor shall deliver to the Trustee to comprise the initial Trust Fund Property:
 - a. One or more duly executed Surety Bonds issued in favor of the Trustee for the benefit of the Department, in the aggregate amount of \$2,050,000.00, such Surety Bonds to be substantially in the same form as Exhibit A attached hereto; or
 - b. A check or wire in the amount of \$2,050,000.00; and
 - c. A form draft and certificates setting forth the terms for the drawing of funds under each Surety Bond.

Within one hundred and eighty (180) days after execution of this Standby Trust, the Grantor shall deliver to the Trustee additional cash, or a Surety Bond in a form acceptable to the Department, or Letter of Credit in a form acceptable to the Department, in the amount of \$325,000.00 to be deposited into the "New Ventures LLC Standby Trust Account". Within three hundred and sixty (360) days after execution of this Standby Trust, the Grantor shall deliver to the Trustee additional cash, or a Surety Bond in a form acceptable to the Department, or Letter of Credit in a form acceptable to the Department, in the amount of \$300,000 to be deposited into the "New Ventures LLC Standby Trust Account".

Within five hundred and forty (540) days after execution of this Standby Trust, the Grantor shall deliver to the Trustee additional cash, or a Surety Bond in a form acceptable to the Department, or Letter of Credit in a form acceptable to the Department, in the amount of \$300,000 to be deposited into the "New Ventures LLC Standby Trust Account" whereupon the Grantor's deposits into the Standby Trust shall total \$2,975,000.

4. The Trustee hereby accepts the Trust Fund Property comprised of the initial property of the Trust Fund Property as set forth in paragraph 3 above, and such other property as may be subsequently transferred to the Trustee or substituted for the initial Trust Fund property, including, but not limited to, Surety Bonds, any proceeds from the Surety Bonds or such other financial assurance mechanisms permitted by the Financial Assurance Requirements as may be provided for by the Grantor, together with all income and earnings derived thereon, if any, less any payments or distributions made by the Trustee pursuant to this Standby Trust. The Trust Fund Property amount is subject to periodic adjustment in accordance with the financial assurance cost estimate and funding requirements at 310 CMR 19.051(6)-(8). The Trust Fund Property shall be held by the Trustee, IN TRUST, for the benefit of the Department in accordance herewith. The Trustee shall not be responsible, nor shall it undertake any responsibility, for the amounts, or the adequacy of the Trust Fund Property, or any financial assurance mechanism, nor any duty to collect from the Grantor any payments necessary to discharge any liabilities of the Grantor established by the Department, nor shall the Trustee have any duty or obligation to monitor or enforce the Grantor's obligations, undertakings or understandings with the Department described herein, but the Trustee's sole responsibility shall be to maintain, draw upon, invest and disburse the Trust Fund Property as expressly provided herein.
5. All interest, income and dividends, if any, earned upon investment of the Trust Fund Property shall be recorded for tax and other purposes as income to the Grantor, whose tax identification number is 04-36-4492639.
6. (a) If the Grantor has failed in whole or in part to carry out its corrective action, closure and/or post-closure maintenance obligations in accordance with approved plans or has otherwise failed to cure any corrective action, closure or post-closure related condition contained in any notice to the Grantor from the Department, including any notice concerning the existence, modification, addition, replacement or failure to replace any financial assurance mechanisms, the Department may send written notification (a "Default Notice") to the Trustee of

the Grantor's failure, after first giving the Grantor fourteen (14) days written notice of the Department's intention to do so, along with written instructions to draw against the Trust Fund Property. Upon receipt of a Default Notice and instructions from the Department to draw upon the Surety Bonds, the Trustee shall, in accordance with such instructions, draw upon the Surety Bonds or such other financial assurance mechanisms as may then be held by the Trustee and make such payments from the Trust Fund Property, or any portion thereof, all as the Department may at that time or thereafter direct in writing. The Grantor shall thereupon lose all right, title and interest in the Trust Fund Property in an amount equal to the cost incurred to perform or have performed all tasks the Department deems necessary to complete proper corrective action, closure and/or post-closure maintenance and monitoring of the Facility.

(b) Notwithstanding the provisions of paragraph 6(a) above, the Trustee shall be authorized, upon written instruction from the Department and without furnishing the Grantor with a Default Notice, to draw upon the Surety Bonds or other financial assurance mechanisms as may then be held by the Trustee (and to make such payments from the Trust Fund property, or any portion thereof, as the Department may at the time or thereafter direct in writing) upon any of the following events:

(i) The Grantor has filed for bankruptcy under the United States Bankruptcy Code; or

(ii) The Grantor has failed to maintain a legal corporate existence and no successor corporation has assumed its obligations under the Solid Waste Management Regulations; or

(iii) The Department has learned or has been notified by the issuer of the Surety Bonds that it has elected not to extend the expiration date of the Surety Bond, and the Department reasonably determines that this Surety Bond has not been replaced with an acceptable Surety Bond or other

acceptable financial assurance mechanism within ninety (90) days after such notice, or

(iv) The Grantor has failed to fully fund this Standby Trust pursuant to the "Pay In Period" schedule set forth in paragraph 3 hereof.

Upon receipt of written instructions from the Department, the Trustee shall, in accordance with such instructions, draw upon the Surety Bond or such other financial assurance mechanisms as may then be held by the Trustee and make such payments from the Trust Fund Property, or any portion thereof, all as the Department may at that time or thereafter direct in writing. The Grantor shall thereupon lose all right, title and interest in the Trust Fund Property in an amount equal to the cost incurred to perform or have performed all tasks the Department deems necessary to complete proper corrective action, closure and post-closure maintenance and monitoring of the Facility.

7. The Trustee, at reasonable times upon request, and, in any event, from and after the funding of the Trust Account with the proceeds of any draw upon the Surety Bonds or such other Trust Fund Property or financial assurance mechanisms as may then be held by the Trustee, shall notify the parties of the principal and interest, if any, remaining in the Trust Account. The parties shall have the right to inspect the Trust Fund Property books and records at reasonable times and upon written request.
8. This Standby Trust shall terminate and shall be of no further force and effect upon the earliest to occur of (i) written notification by the Department to the Trustee that Grantor has satisfactorily completed the corrective action, closure and post-closure maintenance and monitoring of the Facility and authorizing the Trustee to release the Surety Bonds and any and all remaining funds in the Trust Fund Property to the Grantor; or (ii) written notification by the Department to the Trustee to disburse funds pursuant to paragraph 6, hereof, such that no further funds or other assets remain in the Trust Fund Property; or (iii) written notification by the Department to the Trustee indicating that the Grantor has

furnished the Department with a substitute financial assurance mechanism that has been accepted by the Department, and authorizing the Trustee to release any and all remaining funds in the Trust Fund Property to the Grantor.

9. The Trustee shall not be liable for any act or omission taken in good faith unless such act or omission is the result of negligence. Upon written instructions from the Department, the Trustee shall invest or reinvest fund held in the Trust Account only in the following "qualified investments":

- (i) any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America or the following agencies: Federal National Mortgage Association, the Federal Farm Credit Bank, Federal Home Loan Bank, Federal Land Bank, Private Export Funding Corporation and Government National Mortgage Association which has been or may hereafter be created pursuant to an Act of Congress as an agency or instrumentality of the United States of America;

- (ii) any bonds or obligations of any state, the District of Columbia, any territory of the United States of America or any political subdivision or other instrumentality of any of the foregoing, which are rated in one of the top three highest categories for such securities by a nationally recognized bond rating agency, provided that such investment or deposit is not prohibited by federal or state banking laws applicable to the Trustee;

- (iii) negotiable certificates of deposit, banker's acceptances or interest bearing deposits of the Trustee and banks or trust Companies organized under the laws of the United States of America or any state thereof who have outstanding long-term debt rated in one of the highest two categories by a nationally recognized bond rating agency or who have capital and surplus of at least \$50,000,000 or investment agreements continually secured by the

obligations listed in (i) or (ii) with any bank, trust company or broker or dealer (as defined by the Securities Exchange Act of 1934) which broker or dealer is a dealer in government bonds which reports to, trades with and is recognized as a primary dealer by a Federal Reserve Bank, and which broker or dealer is a member of the Securities Investors Protection Corporation or its successor if (A) such obligations are delivered to the Trustee or are supported by a safekeeping receipt issued by a depository satisfactory to the Trustee, (B) a prior perfected security interest in obligations which secure such agreement has been granted to the Trustee, and (C) such obligations are free and clear of any adverse third party claims;

(iv) commercial paper or finance company paper, including that of any affiliate of the Trustee, which is not rated less than prime-one or A-i or their equivalents at the time of purchase, by a nationally recognized bond rating agency or is backed by a Surety Bond or line of credit rated in said categories;

(v) shares of any so-called "money market funds," including the Trustee's "Federated" funds, that have at least 85% of their assets invested in investments of the type described in (i) and (ii) above or are rated in the highest category by a nationally recognized bond rating company.

In the absence of such instruction, the Trustee may, but shall have no obligation to, invest in such qualified investments or other interest bearing bank or money market account with the Bank as it may determine in its discretion, at the same level of risk and level of return as those of the qualified investments.

10. The Trustee shall not be responsible for any losses related to any investment or liquidation of the Trust assets and Trust Fund Property in accordance with paragraph 9. The Trustee shall not be responsible for assuring that the Trust Fund Property or the amounts available therein at any time are sufficient for the disbursements contemplated under this Standby Trust.

11. The Trustee shall not be required to institute legal proceedings of any kind. The Trustee shall not be required to defend any legal proceedings which may be instituted against it with respect to this Standby Trust, nor to take any other action not expressly provided herein, unless requested to do so in writing by any of the parties hereto, and unless and until it is indemnified by the requesting party to the satisfaction of the Trustee, in its sole discretion, against the cost and expense of such defense or action, including, without limitation, the reasonable fees and expenses of its legal counsel. If any conflicting demand shall be made upon the Trustee, it shall not be required to determine the same or take any action thereon and may await settlement of the controversy by appropriate and nonappealable legal proceedings. Upon the commencement of any action against or otherwise involving the Trustee with respect to this Standby Trust, the Trustee shall be entitled to interplead the matter of this Trust, in accordance with Rule 22 of the Massachusetts Rules of Civil Procedure, into a court of competent jurisdiction in the Commonwealth and, in such event, the Trustee, pursuant to a proper order from the Court, shall be relieved of and discharged from any and all obligations and liabilities under this Standby Trust.
12. The Trustee, its directors, officers, employees and agents, shall be indemnified and saved harmless by the Grantor from and against all obligations, liabilities, claims, suits, judgments, losses, damages, costs or expenses of any kind or nature, including without limitation reasonable attorney's fees, which may be imposed on, incurred by, or asserted against the Trustee in connection with or in any way arising out of this Standby Trust or the Trustee's duties hereunder, except for claims involving willful misconduct or negligence. The forgoing indemnity shall survive the resignation of the Trustee or the termination of this Standby Trust.
13. All expenses incurred by the Trustee in connection with the administration of the Trust Fund Property, including all taxes of any kind that may be assessed or levied against or concerning the Trust Fund Property, all brokerage commissions incurred by the Trust Fund Property, all reasonable fees for legal services rendered to the Trustee, compensation of the Trustee, and all other charges and

disbursements of the Trustee that have been approved by the Department shall be paid directly by the Grantor; but if not promptly so paid, then shall be paid from the Trust Fund Property, which shall be entitled to reimbursement from Grantor; provided, however, that any failure to pay the Trustee under this paragraph shall be deemed a violation of paragraph 6 of this Standby Trust and subject to the Default Notice provisions contained therein.

14. The Trustee shall annually, at least thirty (30) days prior to the anniversary date of establishment of the Trust Fund Property, furnish to the Grantor and the Department a statement confirming the market value of the investments and other assets held in the Trust Account as of no more than sixty (60) days prior to the anniversary date of establishment of the Trust Fund Property.
15. The Trustee may resign or the Grantor may replace the Trustee, by giving ninety (90) days prior written notice to the parties hereto, and which notice shall specify the effective date of such resignation or replacement. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, and the payment to the original Trustee of all amounts due hereunder, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Trust Fund Property. If, for any reason, the Grantor fails to cause a successor trustee to assume administration of the Trust within thirty (30) days after the date of the Trustee's notice of resignation, the Department shall be entitled to an additional sixty (60) days from the date of the Trustee's notice to the Department that the Grantor has yet to name such successor trustee. If no successor has been named by either the Grantor or the Department pursuant to this paragraph, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor Trustee shall specify the date on which it plans to assume administration of the Trust in writing sent to the Grantor, the Department, and the present Trustee by certified mail at least ten (10) days before such change becomes effective. Any expenses incurred

by the Trustee as a result of any of the acts contemplated by this paragraph shall be paid as provided in paragraph 13 above.

16. The Trustee shall not be liable for any actions taken or omitted to be taken upon reasonable interpretation of the instructions or furnished notices that it believes to be genuine and duly authorized.
17. All drafts, certificates, notices, reports or other communications required or permitted under this Standby Trust shall be made in writing and shall be sent by registered mail or certified mail, postage prepaid, addressed as follows:

To the Department: Massachusetts Department of Environmental Protection
Business Compliance Division
One Winter Street, 8th floor
Boston, MA 02108
Attn: Eric Fahle

To Grantor: New Ventures LLC
85-87 Boston Street
Everett, MA 02149
Attn: William Thibeault

To the Trustee: U.S. Bank National Association
Corporate Trust Services
One Federal Street, 3rd Floor
Boston, MA 02110
Attention: Chi C. Ma

18. This Standby Trust constitutes the complete understanding of the parties as to the operation of the Trust Fund Property. The terms and conditions of this Standby Trust shall be modified only by written agreement signed by the Trustee, the Grantor, and the Department, or if Grantor ceases to exist, by the Department and the Trustee.

19. This Standby Trust shall be administered, construed and enforced according to the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the parties have caused this Standby Trust Agreement to be executed in triplicate under seal as of the date first written above.

New Ventures, LLC, as Grantor

By: _____

Its: Manager

U.S. Bank National Association, as Trustee

By: _____

Its: Chi C. Ma, Vice President

MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____

Name: Steven A. DeGabriele

Title: Division Director

Business Compliance Division

Exhibit A

Copy of Surety Bonds Attached.

